

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

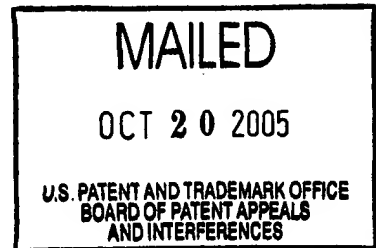
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOB CORNELIS OOSTVEEN, WILLEM MARIE JULIA MARCEL COENE,
JAN HARM DE BOER, FRANCISCUS ANTONIUS JOHANNES KAMPERMAN,
ALOYSIUS MICHAEL JOSEPHUS MARIA SPRUIJT,
and PAULUS REINIER JOANNES VAN ROOSMALEN

Appeal No. 2005-2584
Application No. 09/897,331

ON BRIEF



Before DIXON, SAADAT and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1 through 16. For the reasons stated *infra* we reverse the examiner's rejection of these claims.

The Invention

The invention relates to a record carrier, particularly an optically readable disk, which has information marks along tracks which exhibit first variations representing an information signal recorded on the carrier and second variations caused by variations associated with the information marks. The phase of the first variations is coupled to the phase of the second variations. See page 2 of appellants' specification. The first variations are in the form of pits formed in a track on the disk, which are optically detectable, and the second variation are in the form of track undulation also known as wobble. See page 5 of appellants' specification. The phase of the second variations is coupled to the phase of the first variations in that a predetermined number of wobbles corresponds to a predetermined number of channel bits represented by the first variation.

Claim 4 is representative of the invention and is reproduced below:

4. A record carrier (1) having information marks along a track (11) thereof and exhibiting:

first variations caused by existence and nonexistence of the information marks along the track, said first variations representing an information signal recorded on said record carrier, and second variations (W) caused by variations associated with the information marks; the phase of the second variations being coupled to the phase of the first variations.

References

The references relied upon by the examiner are:

Timmermans et al. (Timmermans)	5,930,210	July 27, 1999
Maeda et al (Maeda)	6,069,870	May 30, 2000

Rejections at Issue

Claims 4 through 6, and 14 through 16 stand rejected under 35 U.S.C. § 102 as anticipated by Maeda. Claims 1 through 3, and 7 through 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Timmermans in view of Maeda. The examiner's rejections are set forth on pages 3 through 11 of the answer.

Opinion

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs, along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer. With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellants and examiner, for the reasons stated *infra*, we will not sustain the examiner's rejection of claims 1 through 16.

We first consider the rejection of independent claim 4 and dependent claims 5, 6, 14 through 16. Appellants assert on page 5 of the brief that claim 4 contains limitations directed to the first variations caused by the existence or nonexistence of information marks along the track and that the phase of the second variations are coupled to the phase of the first variations. Appellants point out that this feature is discussed on page 5 of the appellants' specification. Appellants argue, on pages 5 and 6 of the brief:

The examiner's position expressed in the Advisory Action (paper 12) is that *Maeda et al.* on column 8, lines 18-19 disclose that a predetermined number of wobbles correspond to a predetermined number of channel bits. The appellants respectfully point out that column 8, lines 18-19 of *Maeda et al.* disclose that it is possible to read address information discerned from the wobbling patterns simultaneously with the data represented by the information marks 274. There is no disclosure, or suggestion, within *Maeda et al.* for coupling the phase of the second variations represented by the wobbling waveforms formed by the borders of tracks 270 to the phase of the first variations represented by the information marks 274 that are formed within the tracks 270. Figure 27 of *Maeda et al.* illustrates the equivalent of the first variations represented by the information marks 274 formed in land and groove tracks 270, 271, 272, 273. There is no phase relationship that can be discerned between the first variations represented by the information marks 274 and the wobbling waveforms formed by land and groove tracks 270, 271, 272, 273 within Figure 27 of *Maeda et al.*, or the discussion related thereto.

In response, the examiner argues, on page 11 of the answer, that limitations from the specification are not to be read into the claims. The examiner provides a dictionary definition of "coupled" as "to connect for consideration together" or "to join for combined effect." Further, on page 12 of the answer the examiner states:

In light of the supporting disclosure as an example, the phase of the first variation "a predetermined number of channel bits, represented by the first variation"; first variations information marks; second variations as wobbles; "phase of the second variations as predetermined number of wobbles".

Maeda et al. discloses the phase of the second variations being coupled to the phase of the first variations in that a predetermined number of wobbles correspond to a predetermined number of channel bits represented by the first variations. Specifically, Maeda discloses the phase wobble track **270** in the borders 14, 15 “being coupled” to the phase of the first variations in that, a predetermined number of wobbles (second variations) correspond to a predetermined number of channel bits represented by the first variations (information marks **274**), the predetermined number of wobbles represent address information, which is read simultaneously with the information represented by marks **274** (See for example col. 7, line 22 to col. 8, line 35; Figs. 3,27). Furthermore, as shown in Fig. 27 a predetermined number of marks **274** are being coupled to a predetermined number of wobbles, which represent the address.

We disagree with the examiner’s findings. Initially note that the examiner’s reasoning is not entirely clear as to whether the examiner is interpreting the term “coupled” using the dictionary definitions or as discussed on page 6 of the specification. Nonetheless, we do not consider the dictionary definition provided by the examiner to be proper in determining the scope of claim 4. In analyzing the scope of the claim, office personnel must rely on appellants’ disclosure to properly determine the meaning of the terms used in the claims. **Markman v. Westview Instruments, Inc.**, 52 F3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). “[I]nterpreting what is *meant* by a word *in* a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” (emphasis original) **In re Cruciferous Sprout Litigation**, 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205, (Fed. Cir. 2002) (citing **Intervet America Inc v. Kee-Vet Laboratories Inc.**, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)). Initially, we note that appellants’ specification does not define the term “coupled.” Rather, on page 6, appellants’ specification identifies that coupling the

phases of the first and second variations, means that a predetermined number of wobbles (second variations) correspond to a predetermined number of channel bits represented by the first variations. Additionally, we note that the dictionary definitions asserted by the examiner do not appear to correspond to this discussion in appellants' specification. Further, our reviewing court has stated that they view "extrinsic evidence in general as less reliable than the patent and its prosecution history in determining how to read claim terms, for several reasons. First, extrinsic evidence is by definition not part of the patent and does not have the specification's virtue of being created at the time of patent prosecution for the purpose of explaining the patent's scope and meaning" *Phillips v. AWH Corp.*, 415 F3d 1303, 1318, 75 USPQ2d 1321, 1330 (Fed. Cir. 2005). Accordingly, we consider the scope of the, claim 4, limitation "the phase of the second variations being coupled to the phase of the first variations" to be as described on page 6 of appellants' specification "a predetermined number of wobbles corresponds to a predetermined number of channel bits represented by the first variations."

We next consider the teachings of Maeda. We do not find that Maeda teaches the phase of the second variations being coupled to the phase of the first variations. Maeda teaches an optical disk where, to increase the amount of information that can be stored on the disk, the address of locations on the disk are encoded in the wobbles of the tracks. See column 3, lines 51-55. The phase of the wobbles determines whether the address data encoded in the block of wobbles is a "0" or a "1." See Column 7 lines

42-45. While, we do not find that the phase discussed in column 7 (relationship of wave traveling positive or negative from start of partition, see figure 3) is the same phase that is addressed in the claim, we nonetheless note that column 7 does not address a relationship between the phase (traveling positive or negative) and the information encoded in the track by information marks 274. Further, while Maeda teaches that the number of periods of wobbling is the same in each bit area, we find no teaching in Maeda that the number of bits in the wobbling track correspond to a predetermined number of channel bits represented by the first variation. See column 7, lines 39-42. Thus, we do not find that Maeda anticipates every limitation of independent claim 4. Accordingly, we will not sustain the examiner's rejection of claims 4 through 6, and 14 through 16 under 35 U.S.C. § 102 as anticipated by Maeda.

We next consider the examiner's rejection of claims 1 through 3, and 7 through 13 under 35 U.S.C. § 103 as being unpatentable over Timmermans in view of Maeda. Independent claims 1 and 7 both contain the limitation "the phase of the second variations being coupled to the phase of the first variations." As discussed *supra* with respect to claim 4, we find that the scope of this limitation to be as described on page 6 of appellants' specification "a predetermined number of wobbles corresponds to a predetermined number of channel bits represented by the first variations." In the statement of the rejection of claims 1 through 3 and 7 through 13, on page 7 of the answer, the examiner finds that Timmermans does not teach this limitation, and relies upon Maeda to teach this limitation. We concur with the examiner's finding that




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Timmermans does not teach the limitation of “the phase of the second variations being coupled to the phase of the first variations.” However, as stated *supra* with respect to claim 4, we do not find that Maeda teaches this limitation. Accordingly, we will not sustain the examiner’s rejection of claims 1 through 3, and 7 through 13 under 35 U.S.C. § 103 as being unpatentable over Timmermans in view of Maeda.

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No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

REVERSED

		
JOSEPH L. DIXON)	
Administrative Patent Judge)	
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MAHSHID D. SAADAT)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
ROBERT E. NAPPI)	
Administrative Patent Judge)	

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P. O. BOX 3001
BRIARCLIFF MANOR, NY 10510